IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 66 OF 2003.

State through Public
Prosecutor, Panaji. ... Appellant.

Versus

1. Shri Jainath Pal,
   r/o H. No. 235,
   Baina, Vasco.
2. Shri Mahesh Pal,
   r/o H. No. 235,
   Baina, Vasco.
3. Shri Ramesh Pal,
   r/o H. No. 235,
   Baina, Vasco.
4. Shri Rajkeshar Pal,
   r/o H. No. 235,
   Baina, Vasco. ... Respondents.

Mr. S.N. Sardessai, Advocate for the Appellant.

Mr. M. Rodrigues, Advocate for the Respondents.

Coram : P.V. HARDAS, J.

Date : 22nd April 2004.

ORAL JUDGMENT.

The State, being aggrieved by the Judgment of the IIIrd Assistant Sessions Judge, Margao, dated 27th January 2003, in Criminal Appeal No. 53 of 2002, acquitting the respondents/accused for offences punishable under Sections 324 and 325 read with Section 34 of the Indian Penal Code, has filed the present appeal challenging the aforesaid Judgment.

2. The respondents/accused were tried for offences punishable under Sections 324, 325, 504 and 506(II) read with Section 34 of the Indian Penal Code

before the Judicial Magistrate, First Class, Vasco da Gama. The trial Court, by its Judgment, dated 26th September 2002, in Criminal Case No. 110/S/2000/C, acquitted the respondents for offences punishable under Sections 504 and 506(II) read with Section 34 of the Indian Penal Code and convicted the respondents for offences punishable under Sections 324 and 325 read with Section 34 of the Indian Penal Code and sentenced them to simple imprisonment for 3 months and fine of Rs. 500/- with a default sentence of simple imprisonment for 5 days in the event of non-payment of fine and simple imprisonment for 4 months and fine of Rs. 2,000/- with a default sentence of simple imprisonment for 10 days in the event of non-payment of fine respectively. The respondents/accused, being aggrieved by their conviction and sentence, carried an appeal to the lower appellate Court and the lower appellate Court, by its Judgment referred to above, allowed the appeal and acquitted the respondents.

3. In order to appreciate and evaluate the submissions made on behalf of the appellant/State, a reference to the relevant facts, as emerge from the evidence, is essential.

4. P.W.9 Santosh T. Shirodkar was attached to the Vasco Police Station as a constable. On 20th

November 1999, as per the instructions of P.I. Banaulikar, he was asked to give police protection to P.W.4 Fatima Bi, as per the Order of the Mamlatdar of Mormugao Taluka. He states that from 8.05 a.m. he stood near the house of P.W.4 Fatima to provide police protection and the labourers started the work of laying the pipeline. At about 1.00 a.m. accused nos. 1 and 4 came near the place where they were standing and inquired about the work of laying the pipeline. P.W.9 P.C. Santosh informed the accused regarding the Order for giving police protection. He states that thereafter he went for lunch and at about 2.00 p.m. P.W.2 Irfan Kazir, son of P.W.4 Fatima, came to the Baina outpost and informed them that they had been assaulted. The injured were sent to the Cottage Hospital, Chicalim.

5. P.W.13 P.I. Bhanudas Dessai, who, at the relevant time, was attached to the Vasco Police Station as Police Sub-Inspector, on instructions of P.I. Banaulikar, registered an offence, on 20th November 1999, on the basis of the complaint recorded by P.W.11 Maruti Mukdam. The scene of offence panchanama was drawn by P.W.11 Mukdam, on 29th November 1999, and the same is at Exhibit P.W.1/A. The complainant, that is, P.W.2 Irfan and injured P.W.3 Aisha Bi were examined by P.W.10 Dr. Prakash Shetye, who found that P.W.2 Irfan had an abrasion, which looked like a bite mark over the

right nipple. He also noticed that there was a loss of anterior tooth and there was an abrasion of 1 x 1 cms. on the bridge of the nose. Accordingly, the certificate issued in respect of the examination of P.W.2 Irfan is at Exhibit P.W.10/A Colly. P.W.10 Dr. Shetye had also examined P.W.3 Aisha and noticed a laceration of 5 x 1 x 1 cms. on scalp caused by blunt object. The certificate of P.W.3 Aisha is at Exhibit P.W.10/A Colly. She was referred for radiological examination to ascertain if she had sustained fracture and, accordingly, was examined by P.W.8 Dr. Premanand D. Azgaonkar, on 27th November 1999. P.W.8 Dr. Azgaonkar by his report, at Exhibit P.W.8/A, opined that the X-ray did not show any fracture. During the course of investigation, the respondents/accused came to be arrested and accused no. 4 Rajkeshar was referred for medical examination on 20th November 1999. He was examined by P.W.10 Dr. Shetye, who noticed one contused laceration of 1 x 1 cms. on the bridge of nose, one contused laceration of 1 x 1 cms. behind left ear and an abrasion of 2 x 2 cms. on the left axilla. He found that all the injuries were caused by hard and blunt object and were fresh and simple in nature.

6. Further to the completion of the investigation P.W.13 Bhanudas filed a charge-sheet against the accused. The learned trial Court framed a charge

against the accused vide Exhibit 6 for offences punishable under Sections 324, 325, 504, 506(II) read with Section 34 of the Indian Penal Code. The accused denied their guilt and claimed to be tried. The prosecution in support of its case examined 13 witnesses. The learned trial Court, on consideration of the evidence, as stated above, acquitted the accused in respect of offences punishable under Sections 504 and 506(II) of the Indian Penal Code and convicted and sentenced the accused for offences punishable under Sections 324 and 325 read with Section 34 of the Indian Penal Code. The lower appellate Court, allowing the appeal of the accused, acquitted the accused and, hence, the present appeal at the behest of the State questioning the acquittal of the respondents/accused.

7. Mr. Sardessai, the learned Public Prosecutor appearing on behalf of the appellant/State, has urged before me that P.W.2 Irfan and P.W.3 Aisha are injured witnesses and, though there are minor discrepancies in the evidence of these two witnesses, the same is not enough to jettison their evidence completely. According to him, the relation between the first informant and the accused were strained and, therefore, that furnishes a motive for the accused to have committed the offence. It is also urged on behalf of the appellant/State that the testimony of the other witnesses, namely, P.W.5

Leela Majrekar, P.W.6 Mohammad Rafic and P.W.7 Durgappa Harijan, corroborate the version of the injured witnesses. It was lastly urged that the medical evidence corroborates the testimony of the injured witnesses in respect of the injuries suffered by them. It was, therefore, submitted that the lower appellate Court, by ignoring the evidence on record, has recorded a finding of acquittal and the said finding is unsustainable.

8. P.W.2 Irfan, in respect of the incident, states that at about 1.00 p.m. the police and the labourers went for lunch and at about 2.30 p.m. only one labourer by name Durgappa Harijan (P.W.7) came to the site. His sister Aisha (P.W.3) asked P.W.7 Durgappa to excavate the ditch, upon which accused nos. 1 and 4 told the said labourer not to do so. There was some altercation between P.W.3 Aisha and the accused and accused no. 4 pushed his sister Aisha (P.W.3). Seeing this P.W.2 Irfan intervened and questioned the accused as to why they were pushing his sister. Thereupon all the accused pushed him and started abusing the police. Accused nos. 3 and 4 dragged him near the 'Tulas' plant and threw him on the ground and started assaulting him. Accused no. 4 bit him on the left side of his chest. Accused no. 4 thereafter threw something on his face due to which one upper tooth was dislocated. Seeing the

assault on P.W.2 Irfan, his sister P.W.3 Aisha rushed to his rescue at which time accused no. 4 threw a stone on her head. Seeing the assault on his sister P.W.2 Irfan ran away.

9. P.W.3 Aisha, in respect of the incident, states that when she was instructing P.W.7 Durgappa all the four accused told her not to proceed with the digging of the trench and also abused her in filthy language. P.W.2 Irfan came to the scene of offence and questioned the accused as to what they were doing. P.W.3 Aisha informed P.W.2 Irfan and P.W.2 Irfan asked all the accused not to abuse her. Thereupon accused no. 1 said 'maro saleko' and accused nos.1 and 4 pushed Irfan and Irfan fell on her and then all the four accused dragged Irfan and were assaulting him all over the body. Seeing the assault on her brother, she intervened to separate them. At that time she was hit on her head with a stone but had not seen who had thrown the stone.

10. P.W.5 Leela Majrekar states regarding the incident that she saw accused nos. 2 to 4 assaulting P.W.2 Irfan and when P.W.3 Aisha went to his rescue, accused no. 1 threw a stone at her, as a result of which she sustained a bleeding injury. She states that the incident took place at a distance of about 8 metres

from the house of the accused. In her cross-examination an omission was brought out in respect of P.W.3 Aisha rushing to the rescue of P.W.2 Irfan.

11. P.W.6 Mohammad Rafic, brother of P.W.2 Irfan and P.W.3 Aisha, states that on hearing the shouts that his sister had been assaulted, he rushed out of the house and had seen his sister fallen down unconscious with a bleeding injury on her head. He also saw P.W.2 Irfan being assaulted by accused no. 4 and when he went to the rescue of P.W.2 Irfan, accused nos. 1, 2 and 3 started assaulting him. Thereafter, P.W.2 Irfan fled from the scene and went to the police station.

12. P.W.7 Durgappa Harijan, who was a labourer digging the trench initially did not support the prosecution but one being cross-examined by the prosecution virtually admitted the entire prosecution case. However, he has admitted in the cross-examination that he was brought to Court by P.W.2 Irfan. He has stated that his statement was not recorded by the police and importantly he has stated 'I have not seen the assault by any of the parties. I do not know who fought with whom. I have come to the Court because the complainant brought me here.'.

13. The learned appellate Court, in respect of the

evidence of P.W.2 Irfan and P.W.3 Aisha, found that their evidence consisted of testimony of interested witnesses and though interestedness as a rule entail the origin of a testimony, the Court should be on guard and should scrutinize the evidence of interested witnesses carefully. This observation was necessitated on account of the fact that the prosecution witnesses have admitted that there was previous enmity between the parties.

14. In respect of the testimony of these two witnesses with regard to the injury, the learned appellate Court found that there was discrepancy in their evidence and the medical evidence did not corroborate their assertion. The learned appellate Court found that P.W.10 Dr. Shetye had stated that a blow with some force had to be dealt for the tooth to be dislocated and did not notice any laceration on the lips. Thus, the medical evidence virtually negatived the contention of P.W.2 Irfan that he lost his tooth on account of an injury being caused to him in the incident. The appellate Court, therefore, found that the evidence of P.W.5 Leela, in view of the omission which was brought out on record, could not be termed as of a reliable witness. In respect of P.W.6 Mohammad, the appellate Court found that his presence at the scene of offence was neither shown by P.W.2 Irfan nor by P.W.3 Aisha. P.W.6 Mohammad claims to have been assaulted but

was never referred for medical examination. In respect of P.W.7 Durgappa, acceptance of his evidence as believable, tasks human credulity. P.W.7 Durgappa, though being an independent witness, is wholly unreliable.

15. The substratum of the prosecution evidence, therefore, for sustaining the conviction rests principally on the evidence of P.W.2 Irfan and P.W.3 Aisha. It is true that on account of minor variations in the evidence of witnesses or the omissions brought out in the evidence, the witnesses are not denuded of their status of being reliable witnesses. Interested/related witnesses should put the Court on guard and the Court should scrutinize the evidence carefully. In the present case P.W.2 Irfan and P.W.3 Aisha are also injured witnesses. Curiously the prosecution has not attempted to explain the injuries sustained by accused no. 4. Accused no. 4 had two lacerated wounds and one abrasion. Though the injuries sustained by accused no. 4 are minor and simple injuries, yet, if they are compared, vis-a-vis, with the injuries of the complainant, the injuries which are not explained assume importance. The learned appellate Court relying on the Judgment of the Apex Court in **Lakshmi Singh v. State of Bihar**, (1976) Cr.L.J. 1736, found that by non-explanation of the injuries sustained

by accused no. 4, the prosecution had suppressed the genesis and the origin of the occurrence and had not presented a true version. In the present case, from a perusal of the testimony of these witnesses, it does appear that the prosecution has not come forward with the unfurnished truth and has certainly suppressed the genesis of the occurrence. The prosecution has not been able to explain the injuries sustained by accused no. 4. The appellate Court, thus, gave benefit of doubt and acquitted the respondents.

16. This is an appeal against acquittal and the view of the appellate Court is a possible view based on the evidence on record and there appears to be no perversity in the reasoning warranting any interference in disturbing the finding of acquittal of the appellate Court. In view of this, Criminal Appeal is sans merit and the same is dismissed.

(P.V. HARDAS)
JUDGE.

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